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16 Central Institute for Experimental Animals

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN FRANCISCO DIVISION**

20 THE CENTRAL INSTITUTE FOR) Case No. CV 08-5568 PVT
21 EXPERIMENTAL ANIMALS, a Japanese)
22 corporation,)
23 Plaintiff,)
24 vs.)
25 THE JACKSON LABORATORY, a Maine)
26 corporation,)
27 Defendant.)
28

29 Plaintiff, The Central Institute for Experimental Animals (“CIEA”), replies to the Answer
30 and Counterclaims (“Answer and Counterclaims”) of Defendant The Jackson Laboratory (“Jackson
31 Laboratory”), as follows:

FIRST DEFENDANT COUNTERCLAIM

1. CIEA admits that Jackson Laboratory's first counterclaim purports to seek a judicial declaration pursuant to 28 U.S.C. §§ 2201-02.

2. Admitted.

3. Denied.

4. Denied.

SECOND DEFENDANT COUNTERCLAIM

5. CIEA admits that Jackson Laboratory's second counterclaim purports to seek a judicial declaration pursuant to 28 U.S.C. §§ 2201-02.

6. Admitted.

7. Denied.

8. Denied.

THIRD DEFENDANT COUNTERCLAIM

9. CIEA admits that Jackson Laboratory's third counterclaim purports to set forth a claim for patent infringement pursuant to 35 U.S.C. § 271.

10. Denied.

11. CIEA admits that the Court has personal jurisdiction over it, but otherwise denies the remaining allegations in this paragraph.

12. CIEA admits that a copy of what purports to be the '173 patent is attached as Exhibit A, but otherwise CIEA lacks sufficient information to form a belief as to the truth of the allegations of this paragraph and therefore denies them.

13. CIEA lacks sufficient information to form a belief as to the truth of the allegations of this paragraph and therefore denies them.

14. CIEA lacks sufficient information to form a belief as to the truth of the allegations of this paragraph and therefore denies them.

15. Denied.

16. Admitted.

17. CIEA admits that representatives have had discussions with representatives of NIH regarding the '173 patent, but otherwise denies the allegations in this paragraph.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

22. Denied.

23. Denied.

AFFIRMATIVE DEFENSES

CIEA asserts the following affirmative defenses to Jackson Laboratory's Counterclaims.

FIRST AFFIRMATIVE DEFENSE

1. Jackson Laboratory has failed to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

2. CIEA has not infringed, and does not infringe, the '173 Patent.

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THIRD AFFIRMATIVE DEFENSE

3. One or more claims of the '173 Patent are invalid for failure to satisfy at least one of the conditions for patentability specified in Title 35 of the United States Code, including, *inter alia*, §§ 101, 102, 103 and/or 112.

FOURTH AFFIRMATIVE DEFENSE

4. Jackson Laboratory lacks standing to assert its counterclaim with respect to the '173 patent because, among other things, it lacks standing pursuant to 35 U.S.C. §§ 100(d) and 281.

FIFTH AFFIRMATIVE DEFENSE

5. Jackson Laboratory's claims for relief for infringement of the '173 patent are barred, in whole or in part, by 35 U.S.C. § 287.

ADDITIONAL DEFENSES

6. There may be additional defenses to Jackson Laboratory's claims that are currently unknown to CIEA. Accordingly, CIEA reserves the right to amend its Reply to Counterclaims to allege additional defenses and/or counterclaims in accordance with the case schedule and in the event discovery of additional information indicates that such defenses and/or counterclaims are appropriate.

Dated: March 6, 2009

Respectfully submitted,

By: _____/S/
Kenneth E. Keller
Attorneys for Plaintiff Central Institute
For Experimental Animals

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of March 2009, I caused a true and correct copy of the foregoing:

PLAINTIFF'S REPLY TO DEFENDANT'S COUNTERCLAIMS

to be served via the Court's electronic filing system upon the following counsel of record for Defendant:

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By: _____ /S/ _____
Kenneth E. Keller